

REMARKS

Applicant submits the present amendment concurrently with a Request for Continued Examination. After Applicant's response filed January 22, 2004, the Patent Office, in the Advisory Action of February 3, 2004, indicated that the phrase "the audio segments comprising at least portions of the network-related announcements to be played to a recipient" had not been afforded patentable weight because it appeared in the preamble of the claim. While Applicant respectfully disagrees with this statement in that several claims recited this element in the body of the claim (see claims 7, 12, 40, 43, 52, 55, 59, 60, 63, and 67), Applicant herein amends the remaining independent claims so that this element is recited in the body of each independent claim and therefore, the Patent Office must afford this element patentable weight. To this extent, Applicant's earlier arguments relating to Johnson et al. and how Johnson et al. does not teach or suggest an element are applicable, and Applicant repeats them herein for convenience.

The Patent Office admits that Johnson et al. did not show the element. Johnson et al.'s audio segments are part of a voice mail system that allows employees to create automated voice mail messages to prompt callers to leave messages or provide alternate routes of communication with the user (see col. 1, lines 15-25). These messages are not network-related announcements. As such, this element is not shown by the reference.

Applicant repeats its arguments that Cremia is non-analogous art. The Patent Office, in the Advisory Action, indicated that Cremia discloses a method for providing media content to recipients including playing public service announcements and system identifiers. However, this misapprehends the standard for analogousness. The standard for obviousness is whether or not it is in the same field of endeavor. As the field of Applicant's endeavor is the provision of network-related announcements, the playing of public service announcements and system identifiers is not within the same field of endeavor. Failing the first part of the test for analogousness, the reference may still be analogous if the reference logically commends itself to an inventor faced with the problem facing Applicant. MPEP § 2141.01(a). When an inventor is faced with the problem facing Applicant, i.e., trying to provide audio segments to the recipient so that the recipient is apprised of network-related announcements, the inventor would not look to a reference that elicits demographic information from a person requesting multimedia content. To this extent, the Patent Office has failed to establish that Cremia is an analogous reference.

In response to paragraphs 7, 9, 11, and 13 of the Advisory Action, Applicant appreciates the recitation of the standard for obviousness. However, while the Patent Office remains cognizant of the early standards of obviousness, set forth in *Fine* and *Jones*, the Patent Office still has not addressed the requirements announced by the Patent Office in *Dembiczak*. Specifically, as indicated in the response filed January 22, 2004, when the Patent Office proposes a combination, the Patent Office must 1) explain a motivation to combine the references and 2) substantiate the motivation with objective evidence. If the Patent Office cannot do both, then the rejection is not proper. Specifically, when the Patent Office, in paragraph 7 of the Advisory Action, states "it would allow to dynamically play different contents to recipients for value added to the system," this is insufficient to establish obviousness because it does not provide the evidence required by *Dembiczak*.

Likewise, the similar concluding statements in paragraphs 9, 11, and 13 of the Advisory Action are insufficient to establish obviousness. Until the Patent Office provides the requisite objective evidence, the rejections are improper.

Applicant requests reconsideration of the rejections in light of the amendments and remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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Respectfully submitted,

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